

(1987) 07 AP CK 0019
In the Andhra Pradesh High Court

Union of India (UOI)

APPELLANT

Vs

Bhimeswara Reddy and Others

RESPONDENT

Date of Decision : 07-07-1987

Acts Referred:

Citation : (1988) 2 ACC 580 : (1988) ACJ 660

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

K. Ramaswamy, J.—The first defendant-Union is the appellant. On the intervening night of July 15/16, 1973 between 2.00 and 3.00 A.M., at the level crossing between Nandyal and Panyam Railway Station the driver of the railway engine without any lights or blowing horn dashed against the A.P.S.R.T.C. Bus which was proceeding to Tirupathi via Nandyal. Therein the first respondent and his son, the second respondent were sitting in seats Nos. 11 and 12 in the third row behind the driver. As a result of the accident, the first respondent crammed between the seats and he sustained extensive injuries and fractures. As a fact, he was in Kurnool General Hospital for about two and half months, underwent orthopedic major operation and treatments. His right foot was disfigured and he became limping. He is unable to walk even till date without the support of a stick. He laid the suit for damages in a sum of Rs. 50,000/- against the Union and also the A.P.S.R.T.C. The trial Court granted a decree for Rs. 40,400/- and dismissed the suit for the rest of the amount. Against the amount decreed the Union of India filed the appeal and against the interest disallow the respondents filed cross-objections.

2. The defence of the appellant is two-fold—there is no negligence on the part of the driver of the engine of the passenger train and secondly that the civil suit is not maintainable. The application u/s 110 of the Motor Vehicles Act (Act 4 of 1949) for short, "the Act" shall be the proper form. Therefore the civil court is devoid of jurisdiction. On framing appropriate issues and after consideration of the evidence adduced by the parties; the trial Court discountenanced the defence

of the appellant that the driver was not negligent nor rash in driving the train at the relevant time; it also held that the respondent sustained extensive injuries as spoken to by the doctors PWs 3 and 4 apart from his evidence as PW 1 and that he was a Public Prosecutor from 1961 to 1969 and subsequently he was the Special Public Prosecutor in several cases on behalf of the State, accordingly he suffered extensive damages. It also held that the Civil Court has jurisdiction to try the case. Accordingly, the suit was decreed as stated earlier.

3. Sri Devaraj learned standing counsel for Railways has reiterated and strenuously argued in support of both the contentions. With regard to the first contention, he stated that according to the first respondent, he has lost six teeth but there is no evidence in that regard. Therefore he has not established that he has sustained any damages in the accident. The fact that the accident has occurred at the fateful intervening night of July 15/16, 1973 between 2-00 and 3-00 A.M. is not disputed. The accident also has occurred at the level crossing between Nandyal and Panyam Railway Station is also not disputed. The only question is whether the accident has occurred on account of the rash and negligent driving of the driver. The evidence is categorical that the driver has not blown the horn or any lights have been put on to the engine. Therefore, the man who was in charge of the level crossing had no notice of the engine coming; as a result the gate was open and while the Corporation bus was proceeding at the normal speed on the level crossing the railway engine hit the bus on the rear side. As a result, several persons sustained injuries in which the first respondent is one. Under those circumstances the evidence of PW 1 corroborated by PWs 3 and 4 is categorical that the first respondent sustained extensive injuries and he was in the Government General Hospital for about two and half months and he was operated by the doctor and he was given blood transfusion; he has lost lucrative practice; as a result the grant of Rs. 40,400/- cannot be said to be arbitrary or excessive.

4. The main question that arises for consideration is whether the Civil Court has jurisdiction to entertain this suit. It is the contention of the appellants and also reiterated by its learned Counsel that when the accident involved is on account of any bus used in a public way Section 110 of the Act attracts, before the Tribunal constituted under the Act alone has got jurisdiction to entertain the claim. I am unable to agree. This matter is no longer reintegrated as far as this Court is concerned. *Oriental Fire & General Insurance Co. v. Union of India* AIR 1977 A.P. 222 is also a case of collision between the goods train and lorry on account of which some passengers have sustained injuries apart from the death of the driver and cleaner of the lorry. One of the contentions raised on behalf of the Union in that case was that the Tribunal has got jurisdiction and the Civil Court has no jurisdiction to go into the question. This Court has considered the gamut of operation of the Act in that regard. The Act was intended to be applied for speedy and expeditious trial in respect of an accident occurred on account of the user of the motor vehicle in a public way and death or injuries sustained on account thereof by the victims of the accident. The special procedure was

prescribed to recover from the insurance company, it misleading the insurance company as well. Therefore, the Act was intended to apply in respect of the accident occurred out of user of a motor vehicle in a public way. There appears to be that the Act was not intended to apply for accidents occurred incidentally with the railway administration as well. This Court has pointed out that if the analogy of accidents with the railway is extended, it also encompasses within its ambit even accidents occurred due to fall of a building or a tree, the owner of the building or tree shall be made liable for damages under the Act which was not the intendment of the legislature when a special procedure was introduced under the Act. I respectfully agree with the ratio of this Court. The reasons are obvious. No doubt, the procedure under the Act is efficacious, speedy and in expensive. But the cause of action should arise only when the accident has occurred while using the vehicle on a public way and it is not as a result of collision with any extraneous agencies like collision with a railway engine or other accidents like collapse of a building, etc. If it is a collision or collapse of a building, under which incidentally the vehicle was also involved, it is not intended that the special procedure, prescribed in Section 110-A is to be followed in regard to the claims arising under the Act. No doubt, this decision and other decisions were distinguished by a majority of the The First National Bank Ltd., Ambala Vs. Beri Brothers and Others, and held that incidentally any vehicle is used, the Claims Tribunal constituted under the Act do have jurisdiction to go into the question with great respect to the majority of the learned Judges, I am unable to subscribe to the view expressed therein. The reason is that as stated earlier, if it is extended it travels beyond the bounds of the purpose for which the special procedure is created under the Act and the Tribunal constituted, and even every cause of action other than the injuries sustained in an accident occurred when the Motor Vehicle is used can be lugged within the claims arising under the Act. That does not appear to be the intendment of the Act. Accordingly I do not find any justification to conclude that the Claims Tribunal has jurisdiction. The Civil Court alone has got jurisdiction to go into the question.

5. With regard to the Cross-objections, I do not find any justifiacation to award interest because no interest can be awarded on damages. Award of interest arises put of a contract or under a statute or trade custom. Unless there is a contract between the parties or unless the statute provides payment of interest, interest cannot be awarded.

6. Accordingly, the appeal and the cross-objections are dismissed, but in the circumstances, each party is directed to bear its own costs.